Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43548 of 2023

Applicant :- Nitish Kumar
Opposite Party :- State of U.P.
Counsel for Applicant :- Praveen Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Anurag Bajpai, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. Learned A.G.A. submits that he has received instructions in the matter for which time was granted on 12.10.2023.

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Nitish Kumar, seeking enlargement on bail during trial in connection with Case Crime No. 259 of 2023, under Section 306 I.P.C. registered at P.S. Lanka, District- Varanasi.

5. The F.I.R. of the matter was lodged on 3.7.2023 by Rajkumar Harijan against the applicant alleging therein that his daughter Anjana was married to Nitish Kumar on 25.4.2022 but the applicant was not having good relationship with her. Since he was in love with some other girl his daughter used to object to it but he did not mend his way due to which on 3.7.2023 his daughter committed suicide.

6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the deceased committed suicide and died which is also consistent with the post mortem examination report wherein single ligature mark was found on her body and cause of death has been opined as asphyxia as a result of hanging. It is argued that although cause of death was specific but viscera was preserved for chemical analysis. Learned counsel for the applicant argued that there is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased, the applicant has no mens-rea at all, there is no overt act whatsoever of the applicant, which resulted in the death of

the deceased, the applicant has no motive at all to commit the aforesaid offence. It is argued that the applicant has no other criminal antecedents as stated in para-31 of the affidavit and is in jail since 05.7.2023.

7. Per contra, learned State counsel opposed the prayer for bail but could not dispute the arguments as aforesaid.

8. After having heard learned counsels for the parties and perusing the record, it is evident that the deceased committed suicide and died which is also consistent with the post mortem examination report wherein single ligature mark was found and cause of death was opined as asphyxia as a result of hanging. There is no abetment and instigation of any kind by the applicant which has any nexus with the death of the deceased, the applicant has no mens-rea at all, there is no overt act whatsoever of the applicant, which resulted in the death of the deceased, the applicant has no motive at all to commit the aforesaid offence.

9. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

10. Let the applicant- Nitish Kumar, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence

proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(V) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

11. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

12. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 30.10.2023
Naresh

Digitally signed by :-
NARESH KUMAR
High Court of Judicature at Allahabad